

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

MARIA GUZMAN MORALES &)
MAURICIO R. GUAJARDO, &)
On behalf of themselves and all other)
similarly situated individuals,)
)
Plaintiffs,) CASE NO. 8:08-cv-504
)
)
v.)
)
FARMLAND FOODS, INC., a Delaware)
Corporation and subsidiary of)
Smithfield Foods,)
)
Defendant.)

**JOINT STIPULATION FOR CONDITIONAL CERTIFICATION AND NOTICE UNDER
29 U.S.C. § 216(b)**

Plaintiffs Maria Guzman Morales and Mauricio R. Guajardo, on behalf of themselves and other similarly situated employees, and Defendant Farmland Foods, Inc. (collectively the “Parties”) file this Joint Stipulation for Conditional Certification and Notice Under 29 U.S.C. § 216(b) and in support respectfully show the Court as follows:

1.

On July 21, 2009, Magistrate Judge Thalken entered his Report and Recommendation regarding Plaintiffs’ Motion to Proceed as a Collective Action and Facilitate Notice Under 29 U.S.C. § 216(b) (Doc. No. 74) (“R&R”). Judge Thalken recommended that the following class be conditionally certified:

All current and former non-exempt production employees who have been employed at any time by Farmland Foods, Inc. at its hog processing facility in Crete, Nebraska, during the time period November 14, 2005, to the present, who use or used personal protective equipment, and were paid on a gang time compensation system.

R&R, Doc. No. 74, p. 10.

2.

Both parties have objections to various portions of the R&R. In lieu of objecting to the R&R, however, the Parties have met and conferred and hereby stipulate that a class consisting of the following individuals (hereinafter, the "Class") should be conditionally certified and notified of this lawsuit:

ALL CURRENT AND FORMER NON-EXEMPT PRODUCTION EMPLOYEES (EXCEPT AS PROVIDED IN PARAGRAPH 3 BELOW) WHO HAVE BEEN EMPLOYED AT ANY TIME BETWEEN AUGUST 21, 2006 AND THE PRESENT BY FARMLAND FOODS, INC. AT ITS HOG PROCESSING FACILITY IN CRETE, NEBRASKA, WHO USE OR USED PERSONAL PROTECTIVE EQUIPMENT, AND WERE PAID ON A GANG-TIME COMPENSATION SYSTEM, AS WELL AS NON-EXEMPT PRODUCTION EMPLOYEES WHO HAVE BEEN EMPLOYED IN ONE OF THE FOLLOWING DEPARTMENTS, BETWEEN AUGUST 21, 2006 AND THE PRESENT, IF THEY USE OR USED PERSONAL PROTECTIVE EQUIPMENT, REGARDLESS OF THEIR TYPE OF COMPENSATION SYSTEM:

- Kill
- Scald (Beginning with the Sticker)
- Cut
- Loins
- Picnics
- Ham Bone
- JBO
- Bacon
- Chop Shop
- Cryovac (Case Ready)
- Smoked Meats
- Cure
- Sausage
- Trim Blend
- Night Bacon
- Night Chops
- Night Cryovac
- Night Cure
- Night Ham Bone
- Night Loins
- Night Precook Sausage
- Night Ribco

- Night Sausage
- Night Smoked Meat
- Night Trim Blend

3.

The Parties stipulate that individuals in the departments identified above who performed only the following “support” jobs during the relevant time period shall not be included in the Class:

- Janitors classified in the following departments: Bacon, Night Bacon, Boning, Chop Shop, Night Chop Shop, Fab Loins, Night Fab Loins, Fab Picnics, Sausage, Night Sausage, Smoke Meats, Night Smoked Meats and JBO (also known as Special Fab)
- Wash Pens
- Tree Wash
- Vat Wash
- Palletizer/APC
- Labelers
- Strappers
- Scale Box Data Workers
- Ice Loin Bander/Ice Product
- Data/print/stack/strap
- Strap and Freeze Box
- Scalers
- Forklift Operators
- Mule Drivers
- Tattoo Hogs
- Doctor Helper
- Drive Hogs
- Shacklers
- Trolley Room
- Drive Process Slow Hog
- Hog Downer Helper

4.

To facilitate notice to the Class, the Parties also stipulate to the following terms:

- a. Within five (5) business days from the date of the Court’s Order conditionally certifying the Class as stipulated herein, the parties will confer regarding a proposed Notice form, and seek Court approval thereof.

- b. Within five (5) business days from the date of the Court's Order approving a Notice form, Defendant Farmland Foods, Inc. shall deliver to Plaintiffs' counsel in a usable electronic format the last known names, addresses and telephone numbers of the persons in the Class.
- c. Within five (5) business days from the date of delivery by Defendant of the class list to Plaintiffs' counsel, Plaintiffs shall cause to be mailed, at their sole expense, the approved Notice and Consent form to the Class and shall include a self-addressed, stamped envelope. Plaintiffs may employ a third-party administrator for this task.
- d. Any member of the Class shall have 120 days from the date of mailing of the Notice and Consent form to return a postmarked copy of the consent form to Plaintiffs' counsel (or the third-party administrator) for filing. Consents will be deemed to be filed on the day they are stamped as received by either Plaintiffs' counsel or the administrator if they are filed with the Court within 5 business days thereafter; otherwise, the date on which they are actually filed with the clerk will be the effective date of filing. All consents must be filed with the Court no more than 130 days from such date of mailing of notice.
- e. Plaintiffs' counsel will provide notice to both the Court and Defendant that the Notice and Consent forms have been mailed, within three (3) days from the date of mailing.
- f. Nothing in this Stipulation shall preclude Defendant from seeking decertification and/or asserting any other appropriate defense against the claims of the Class.

So stipulated and agreed, this 21st day of August, 2009.

/s/ Shanon J. Carson

Shanon J. Carson

Admitted *Pro Hac Vice*

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CERTIFICATE OF SERVICE

I hereby certify that on this 21st day of August, 2009, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system which sent notification of such filing to the following:

Carolyn H. Cottrell
Christopher P. Welsh
James R. Welsh
Philip A. Downey
Shanon J. Carson
Todd M. Schneider
W. Hank Willson, IV

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